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A NEED FOR GENDER NEUTRAL LAW: SECTION 498A OF THE INDIAN PENAL CODE, 1860

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ABSTRACT

Gender-specific laws have long been a subject of debate in legal discourse, particularly within the context of addressing issues of domestic violence and marital discord. Section 498A of the Indian Penal Code of 1860 stands as a notable example, aimed ostensibly at protecting married women from cruelty and harassment by their husbands or in-laws. However, the implementation and consequences of this law have brought to light significant concerns regarding its gender-specific nature and its potential for misuse. The primary purpose of this study is to critically examine the efficacy and fairness of Section 498A in its current form, particularly in light of the changing dynamics of contemporary relationships and evolving societal norms. This paper explores the imperative for gender-neutral reforms within Section 498A, advocating for a more equitable legal framework that ensures justice for all parties involved. Through a comprehensive review of legal literature, case studies, the paper evaluates the impact of gender-specific legislation on the society. The findings of this study highlight several key shortcomings of the existing gender-specific approach of Section 498A. While designed to protect women from cruelty, the law often fails to acknowledge instances of male victimization and perpetuates gender stereotypes that hinder the pursuit of justice for all individuals. Moreover, the data shows a concerning trend of misuse of Section 498A for personal vendettas and extortion, resulting in the unjust persecution of innocent individuals, including women. This paper asserts the pressing need for gender-neutral reforms within Section 498A of the Indian Penal Code. By adopting a more inclusive approach that recognizes the diverse experiences and vulnerabilities of individuals regardless of gender, the legal system can fulfill its mandate of safeguarding the rights and dignity of all citizens.

Keywords: Section 498 A of Indian Penal Code 1860, Cruelty, Misuse, Gender Neutral Reforms.

INTRODUCTION

The Indian Penal Code (IPC) of 1860, a cornerstone of the Indian legal system, encompasses a wide array of statutes aimed at safeguarding societal order and individual rights. Among its provisions, ⁴⁴⁵Section 498A stands out as a significant legal instrument specially crafted to protect married women from cruelty and harassment by the husband or the relatives of the husband. This article argues

that Section 498A, in its current form, overlooks the possibility of men being victims of domestic abuse and necessitates a shift towards gender-neutral domestic violence laws.

However, the implementation and consequences of this law have ignited a contentious discourse surrounding its gender-specific nature and its repercussions on the administration of justice. In recent years, Section 498A has come in light, drawing attention to its inadequacies and unintended ramifications. While the law's original intent was to provide recourse for aggrieved women facing cruelty and domestic abuse, its application has revealed systemic biases and challenges that

⁴⁴⁵ Indulia, B., Ridhi, Jilani, S., Pandey, S., Mmg, Anand, V., Tarpur, A. D., Ahmad, F., Sm, Savita, Rawat, L., & Justin. Cruelty to women [s. 498-a IPC and Allied sections]. SCC Times. (2021, May 29), available at - <https://www.sconline.com/blog/post/2018/12/03/law-for-laymen-section-498-a-ipc-and-allied-sections-cruelty-to-women/> (last visited March 2, 2024).

undermine its efficacy. The women misuse this law for their own benefit or to take revenge against their husband and relatives. The inherent gender bias within Section 498A creates a legal asymmetry. The law solely recognizes women as victims and men as perpetrators. This disregards the growing number of cases where men are subjected to physical, emotional, and financial abuse within their domestic relationships.⁴⁴⁶ Studies conducted based on the reports of National Crime Records Bureau of India acknowledge the rise in reports of domestic violence against men, highlighting the need for a legal framework that acknowledges their suffering. The absence of such recognition not only invalidates their experiences but also discourages them from seeking help due to social stigma and fear of not being taken seriously by the legal system. With growing instances of misuse and false accusations have raised profound questions about the fairness and integrity of the legal framework governing marital disputes. This article delves into the pressing need for gender-neutral reforms within Section 498A of the Indian Penal Code. By examining the historical evolution, legal interpretations, and societal implications of this statute, the article aims to elucidate the complexities surrounding gender-specific legislation and advocate for a more inclusive approach to addressing domestic discord. Through a critical analysis of existing literature, case studies, and legal precedents, we will look into the law and its implications. As the discourse on gender equality and justice continues to evolve, it becomes imperative to re-evaluate and recalibrate legal frameworks to ensure they align with contemporary values and societal aspirations.

MISUSE OF THE LAW

Section 498A of the Indian Penal Code (IPC) stands as a legislative response to the horrific

reality of domestic violence faced by women in India. Introduced in 1983, it criminalizes cruelty inflicted by a husband or his relatives on a woman with the intent to coerce or drive her to commit suicide or subject her to cruelty.⁴⁴⁷ It was thought that the criminalisation of cruelty would violate the privacy of marriage. However, despite its noble intentions, Section 498A suffers from limitations that necessitate a critical examination and a push for gender-neutral domestic violence laws. The most glaring limitation of Section 498A is its inherent gender bias. By solely recognizing women as victims and men as perpetrators, the law ignores the growing body of evidence that highlights men as victims of domestic violence as well. Another significant concern surrounding Section 498A is its vulnerability to misuse. Instances of false complaints and malicious accusations against husbands and in-laws have cast a shadow on the law's effectiveness. The ease with which a complaint can be filed, combined with the bailable nature of the offense in some cases, creates a system susceptible to manipulation. This can be weaponized for personal vendetta or exert pressure in marital disputes. False accusations can lead to unnecessary arrests, damage reputations, and subject men to prolonged legal battles. This not only undermines the credibility of genuine complaints but also diverts valuable legal resources away from addressing the core issue of domestic violence.⁴⁴⁸ The Supreme Court in the case of *Kahkashan Kausar and Ors. v the State of Bihar and Ors* also noted that there is an increasing tendency among the complainants of implicating relatives of the husband in matrimonial disputes, without analyzing the consequences of a trial on the complainant as well as the accused. The court also observed to be cautious while proceeding against the relatives and in-laws of the husband when no prima facie case is made out against them. To ensure the law's effectiveness

⁴⁴⁶ Swayam, SECTION 498A: A Report Based Upon Analyzing Data from the National Crime Records, 2005- 2009, page cited – 8th, (August 11th), available at - <https://feministlawarchives.pldindia.org/wp-content/uploads/498A-Report-for-NCW-final.pdf>

⁴⁴⁷ Kashish Shah, Marital Cruelty and Section 498A, 2 Jus Corpus L.J., 324 - 335, page cited- 326, (2022).

⁴⁴⁸ Agnes Sabu, Loopholes in Section 498-A IPC, 2 Jus Corpus L.J. 645-652, page cited- 649, (2022).

and protect against misuse, robust safeguards are necessary. These could include stricter criteria for filing complaints, mandatory counseling in marital disputes, and stricter penalties for proven false accusations. Moving towards gender-neutral domestic violence legislation aligns with India's international human rights commitments. As a signatory to the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) and other human rights conventions, India is obligated to ensure equal protection for all individuals under the law. A gender-neutral approach would demonstrate India's commitment to these international standards and promote a society free from gender-based violence. Equality before the law, irrespective of gender, is a fundamental principle of a just society. Gender-neutral laws would uphold this principle, ensuring that all victims have equal access to legal protection and support services. One of the primary criticisms of Section 498A is its narrow focus on protecting women, which neglects the experiences of male victims of domestic abuse. While it is undeniable that women are disproportionately affected by domestic violence, research indicates that men also experience abuse within marital relationships, albeit to a lesser extent. By exclusively framing domestic violence as a gendered issue, Section 498A perpetuates harmful stereotypes and fails to provide adequate protection and support for all victims, regardless of gender. This misuse undermines the credibility of genuine cases of domestic violence. Furthermore, the gender-specific nature of Section 498A reinforces traditional gender roles and stereotypes, perpetuating the narrative of women as inherently vulnerable and in need of protection, while men are cast as perpetrators by default. This binary framing fails to account for the complexities of intimate relationships and the diverse experiences of individuals within them. By framing domestic violence solely as a women's issue, the law overlooks the nuances of power dynamics and fails to

address the root causes of violence within relationships.

CASE LAWS

⁴⁴⁹In the case of *Sushil Kumar Sharma v. Union of India & Ors* (2005) The case involved the husband, Sushil Kumar Sharma, who was accused by his wife of dowry harassment and subjecting her to cruelty. However, investigations revealed that the accusations were false and made with malicious intent, as the wife had filed for divorce and sought to gain an advantage in matrimonial proceedings. In its judgment, the Supreme Court recognized the prevalence of false cases under Section 498A and expressed concern over the misuse of the law for personal vendettas and extortion. The court emphasized the need to prevent the misuse of legal provisions intended to protect women from domestic violence while ensuring that innocent individuals are not unjustly persecuted. The court highlighted the importance of conducting thorough investigations and requiring credible evidence before filing charges under Section 498A.

⁴⁵⁰In the case of *Kamlesh Panjiyar vs state of Bihar* (2005) The Supreme Court, in its judgment, acknowledged the growing concern over the misuse of Section 498A and the need for safeguards to prevent its abuse. The court emphasized that while it is essential to protect women from domestic violence and cruelty, false accusations and unjust arrests also violate the rights of innocent individuals. In its ruling, the Supreme Court laid down guidelines to prevent arbitrary arrests and harassment under Section 498A. The court directed law enforcement agencies to conduct thorough investigations before making arrests, ensuring that there is credible evidence to support the allegations. The case serves as a reminder of the complexities surrounding laws relating to

⁴⁴⁹ Eeshmitha Ranjani, *SUSHIL KUMAR SHARMA VS. UNION OF INDIA AND ORS.*, LAWFOYER, (2023), available at - <https://lawfoyer.in/sushil-kumar-sharma-vs-union-of-india-and-ors/> (last visited March 3, 2024).

⁴⁵⁰ Kamlesh Panjiyar @ Kamlesh Panjiyar v. State of Bihar, 01/02/2005, available at - <https://main.sci.gov.in/jonew/judis/29416.pdf> (last visited March 4, 2024).

domestic violence and dowry harassment. While these laws are intended to protect vulnerable individuals, they must be applied judiciously to prevent their misuse and uphold the principles of justice and fairness.

In the case of ⁴⁵¹Arvind Bakelal Verma vs. The State of Maharashtra (2013) The Bombay High Court, in its judgment, acknowledged the serious nature of allegations under Section 498A and the need to protect married women from domestic violence. However, the court also highlighted the increasing instances of misuse of the provision for personal vendettas and extortion. In its ruling, the Bombay High Court emphasized the importance of conducting thorough investigations and ensuring that evidence is carefully evaluated before charges are brought under Section 498A. The judgment in Arvind Bakelal Verma vs. The State of Maharashtra serves as a reminder of the challenges posed by laws intended to protect vulnerable individuals while also safeguarding against their misuse. It highlights the need for a balanced approach in addressing cases of alleged domestic violence, ensuring that justice is served while protecting the rights of all parties involved.

SOLUTIONS

The need for gender-neutral domestic violence laws doesn't diminish the specific challenges faced by women. Existing support structures, such as shelters and counseling services specifically catering to women's needs, must be strengthened and expanded. However, a gender-neutral approach would create a more inclusive legal framework. This could involve: Redefining cruelty – The law's definition of cruelty should encompass physical, emotional, and financial abuse, applicable to all genders. Secondly, Shifting the Focus – The emphasis should move from the marital status of the victim to the nature of the abusive relationship.

⁴⁵¹ 2013 all mr (CRI) 2676, Arvind Bakelal Verma vs. the state of Maharashtra, NEARLAW.COM, available at - [https://nearlaw.com/PDF/MumbaiHC/2013/2013-ALL-MR-\(CRI\)-2676.html](https://nearlaw.com/PDF/MumbaiHC/2013/2013-ALL-MR-(CRI)-2676.html) (last visited March 4, 2024).

This would ensure protection for individuals in live-in partnerships or same-sex relationships as well. Thirdly, Introducing Protective Orders – Legislation could incorporate provisions for protective orders, allowing victims to seek immediate protection from further abuse, regardless of gender. Lastly, Sensitized Law Enforcement – Police and judicial officers require training to effectively handle domestic violence cases, irrespective of the victim's gender. Moreover, alongside legal reforms, there is a need for broader societal change to challenge traditional gender norms and promote healthier, more equitable relationships. Education and awareness campaigns can play a crucial role in challenging stereotypes and promoting mutual respect and consent within intimate relationships. Additionally, efforts to provide support and resources for victims of domestic violence, regardless of gender, are essential for addressing the underlying factors that contribute to violence and abuse. ⁴⁵²A proper investigation should be made before the arrest of the husband and his family member, meanwhile the complainant should be separated from the husband and his family by sending her to the parents' house or put in family welfare centre. In conclusion, the need for gender-neutral laws in addressing section 498A of the Indian Penal Code, is undeniable. By adopting a more inclusive and equitable approach, the legal system can better fulfill its mandate of ensuring justice and protection for all individuals, regardless of gender. Through legal reforms, societal change, and collective action, we can strive towards a future where all individuals are treated with dignity and respect within their relationships and within the eyes of the law.

CONCLUSION

In conclusion, the imperative for gender-neutral reforms within Section 498A of the Indian Penal Code is evident, given the complexities and challenges surrounding its implementation.

⁴⁵² Aarya Singh & Kamal Nayan, 498A IPC - A Shield to Defend Women or a Weapon?, 4 INDIAN J.L. & LEGAL Rsch. 1 (2022).

While the law was initially enacted with the noble intention of protecting married women from cruelty and harassment, its gender-specific nature has led to unintended consequences, including the potential for misuse and unjust persecution. The examination of case law and other literature works, underscores the pressing need for a more inclusive legal framework that recognizes the diverse experiences and vulnerabilities of individuals regardless of gender. Gender-neutral laws not only uphold the principles of equality and justice but also contribute to fostering healthier relationships and promoting mutual respect within society. Reforms within Section 498A should involve amending the language of the law to remove gender-specific references and replace them with gender-neutral terminology. Additionally, procedural safeguards must be implemented to prevent arbitrary arrests and harassment, ensuring that accused individuals are afforded due process rights and that investigations are conducted impartially and thoroughly. Moreover, alongside legal reforms, there is a need for broader societal change to challenge traditional gender norms and stereotypes. Education, awareness campaigns, and support services should be provided to address the root causes of domestic violence and promote healthy relationship dynamics based on mutual consent and respect. By advocating for gender-neutral laws within Section 498A, we can strive towards a more equitable and just society where the rights and dignity of all individuals are upheld, irrespective of gender. Through collective action and commitment to reform, we can pave the way for a future where domestic disputes are resolved through dialogue and mediation rather than legal battles, and where justice is truly blind to gender.

REFERENCES

- 1) Loopholes in Section 498-A IPC – by Agnes Sabu- 2 Jus Corpus L.J. 645 (2022).
- 2) Section 498A of the Indian Penal Code, 1860 – A Stage towards Social Justice – by Muskan Bansal- 3 INT’L J.L. MGMT. & HUMAN. 550 (2020).
- 3) Detailed Study on Section 498 of IPC – by Saumya Garg – 3 Jus Corpus L.J. 983 (2022).
- 4) 498A IPC – A SHIELD TO DEFEND WOMEN OR A WEAPON? – by Aarya Singh & Kamal Nayan, Uttaranchal University – 4 INDIAN J.L. & LEGAL Rsch.1 (2022).
- 5) 498A IPC- A Shield to Protect Women or a Weapon to Harass Men- by Bhupinder and Dr. Naveen Nandal – Vol. 24, Issue 2, 2020, Pages. 606 – 615 (2020).
- 6) A Study on Misuse of Section 498A of Indian Penal Code, 1860- by Gourav Kuma – IJLMH | Volume 2, Issue 3 (2019).
- 7) Fallacies of a Supreme Court Judgment: Section 498A and the Dynamics of Acquittals – by Prashant K Trivedi and Smriti Singh – Economic and Political Weekly, Vol. 49, No. 52 (DECEMBER 27, 2014), pp. 90-97.